



U.S. Department of Justice

United States Attorney
Eastern District of New York

PEN:DMP
F. #2007R00761

271 Cadman Plaza East
Brooklyn, New York 11201

December 16, 2011

By Hand and ECF

The Honorable Dora L. Irizarry
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Courtney Beckford, et al.
Criminal Docket No. 09-525 (S-1) (DLI)

Dear Judge Irizarry:

The government encloses its edits to the Court's proposed jury charge for the above-referenced case. We also respectfully submit this letter to explain our proposed edits to the Court's description of the elements of the substantive counts of mail fraud.

In the Court's charge, the Court uses a formulation of the elements of mail fraud that is similar to the elements set forth in Sand's Modern Federal Jury Instructions, Instruction 44-3. However, Judge Sand notes in his comments to Instruction 44-3 that the Second Circuit uses a different three-element formulation requiring "(1) a scheme to defraud (including proof of intent to defraud), (2) money or property as the object of the scheme, and (3) use of the mails." See also Fountain v. United States, 357 F.3d 250, 255 (2d Cir. 2004) (explaining the basis for the Second Circuit's formulation); United States v. DiNome, 86 F.3d 277, 283 & n.5 (2d Cir. 1996) (same).

Under the Second Circuit's test, the first of these elements, the scheme to defraud, requires "(i) the existence of a scheme to defraud, (ii) specific intent to defraud on the part of the defendant, and (iii) material misrepresentations." United States v. Handakas, 286 F.3d 92, 100 (2d Cir. 2002); see also United States v. Walker, 191 F.3d 326, 335 (2d Cir. 1999) (explaining that proof of fraudulent intent is an "essential component" of the "scheme to defraud" element).

Accordingly, we have modified the mail fraud charge to reflect the Second Circuit's formulation.

We believe that the remainder of the government's proposed changes to the Court's jury charge are self-explanatory, but we are available to address any remaining issues as the Court directs.

Respectfully submitted,

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